S.B.Civil Writ Petition NO.7064/2003

Asu Ram

vs

State of Rajasthan & Ors.

DATE OF ORDER : - 4.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sudhir Sharma, for the petitioner.
Mr.Nagraj Goswami, for the respondent
Mr.L.R.Upadhayay, Dy.GA, for the State.

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Heard learned counsel for the parties.

Learned counsel for the petitioner submits that the petitioner was given a land in allotment vide Annex.1 dated 5th Sept., 1986, but because of the some dispute, the matter remained for consideration before the Dy.Commissioner, Colonization, IGNP, Bikaner, who passed the order on 28th Oct., 2000 and sent the various files including the file of the petitioner to the Addl. Commissioner, Colonization, Bikaner for consideration. The copy of the order of the Dy. Commissioner, Colonization, IGNP, Bikaner dated 28th Oct., 2000 is placed on record as Annex.1. According to petitioner, the petitioner's land is not falling in the catchment area or Agore land or in Jor payatan, but the authorities are not considering the case of the petitioner in view of the order of the

State Government dated 16th July, 2003, which only prohibits construction permission in the Jor Payatan, Agore and Catchment area. According to learned counsel for the petitioner, the authorities may make complete measurement to find out whether the petitioner's land is falling in any catchment area, Agore or any Jor Payatan and if it is not falling in that prohibited area then the petitioner's case may be decided by the competent authorities in accordance with law and if authorities found that petitioner is entitled for any favourable order, same may be passed. Learned counsel for the petitioner also pointed out that petitioner has already filed the civil suit for injunction against the respondent and in that suit, the injunction order has been confirmed by the trial court on 26th August, 2000. In view of the above, injunction order, the petitioner is in possession of the property in dispute.

Learned counsel for the respondent submitted that the petitioner cannot claim any right over the land till he gets the clear title. It is also submitted that no land can be allotted, which is falling within the catchment area or in the Agore or in the Jor Payatan. Learned counsel for the respondent also submitted that there is an injunction order in favour of the petitioner and copy of the injunction order has been placed on record by the respondent as Annex.R/1.

In view of the above facts, the controversy involved in the civil

suit is different and the prayer of the petitioner is entirely different and such prayer may not be granted by the civil court, therefore, it will be just and proper to direct the respondents to decide the case of the petitioner after making complete measurement of the relevant area and after finding out whether the land in question is falling in any of the area as mentioned in Annex.4 dated 16.7.2003 or not and if the land is not falling in that prohibited zone then the authorities may pass appropriate order of allotment of the land in favour of the petitioner in case the petitioner fulfills all other requirement as required by law and petitioner is found entitled for the relief in accordance with law only.

Hence,the writ petition of the petitioner is allowed as mentioned above.

(Prakash Tatia), J.

c.p.goyal/-